

STATE OF MINNESOTA  
COUNTY OF RAMSEY

DISTRICT COURT  
SECOND JUDICIAL DISTRICT  
CIVIL DIVISION

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In Re Minnesota State Court Guidant Corp.  
Implantable Defibrillators Product Liability  
Litigation.

**ORDER 5**

Court File No.: 62-C4-06-006672

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**DEPOSITIONS**

In order to avoid duplicative discovery and to prevent the unnecessary expenditure of the resources of the court and parties, this Court issues the following Order. References to "this litigation" in this Order are to the above-captioned matter unless otherwise qualified. This Order is to be read in conjunction with the other Orders of this Court.

**IT IS ORDERED** that all depositions in this litigation shall be conducted as follows, absent further order of the Court:

**1. Cooperation.**

Counsel shall cooperate with, and be courteous to, each other and deponents. Depositions shall be scheduled and conducted, and disputes shall be resolved, in accordance with this Order and the Minnesota Rules of Civil Procedure.

**2. Coordination.**

Counsel designated to depose a witness on behalf of other parties shall consult with counsel for such parties, in advance of the deposition, to determine the topics of examination and the specific questions to be asked. Non-questioning counsel shall submit to the designated counsel, in

advance of the deposition, their proposed areas of examination and proposed questions.

**3. Use of MDL depositions in this litigation; supplemental depositions.**

Depositions previously taken in the Federal Multi-District Litigation (MDL), currently pending in the United States District Court for the District of Minnesota, shall be deemed to have been taken, and may be used for all appropriate purposes, in this litigation. A witness who has been deposed in the MDL may be deposed in this litigation only under the following circumstances:

- a. the witness has not been deposed in any other related Minnesota state court proceeding;
- b. the law firm examining the witness in this litigation has not previously examined the witness in the MDL;
- c. the law firm examining the witness has reviewed the deposition of the witness in the MDL, and does not ask a question, or substantially the same question, that was asked and adequately answered in the MDL; and
- d. the actual examination of the witness in this litigation does not exceed seven (7) hours.

In all other circumstances, a witness who has given a deposition in the MDL shall not be subject to a deposition in this litigation absent agreement of the parties, or an Order of this Court upon a showing of good cause. In the event a party believes that a supplemental deposition of a witness who has been previously deposed in the MDL is otherwise necessary, the party shall meet and confer with the adverse party. If an agreement cannot be reached, the party seeking the deposition may move the Court to order the deposition. The permissible length of the deposition shall be determined by agreement or by court order.

**4. Cross-notices of future depositions originally noticed in MDL.**

Counsel in this litigation shall coordinate the taking of depositions with counsel in the MDL, to the extent practicable. Should a dispute arise between parties with regard to the

cross-noticing of a deposition in this litigation that was originally noticed in the MDL, this Court will assess the conduct of the parties in accordance with the Minnesota Rules of Civil Procedure and in consideration of the following:

a. Defendants have responded to discovery to the extent necessary to allow the Plaintiffs to reasonably prepare for the deposition. It will be presumed that there has been sufficient time to reasonably prepare if such responses have been served upon Plaintiffs' Liaison Counsel no less than forty-five (45) days prior to the date of deposition.

b. Defendants' Liaison Counsel has provided to Plaintiffs' Liaison Counsel no less than twenty (20) days notice of any deposition originally noticed in the MDL.

c. The parties have reasonably considered matters relating to cost and convenience.

Absent agreement or further order of this Court upon a showing of good cause, examination by counsel in a deposition originally noticed in the MDL and cross-noticed in this litigation shall not exceed three (3) hours of actual examination time.

**5. Cross-notice of future depositions originally noticed in related litigation in other states; cross-notice of future depositions originally noticed in this litigation.**

Counsel in this litigation shall coordinate the taking of depositions with counsel in related litigation commenced in other states, to the extent practicable. Should a dispute arise between parties under such circumstances, this Court will assess the conduct of the parties in accordance with the Minnesota Rules of Civil Procedure and in consideration of the following:

a. Defendants have responded to discovery to the extent necessary to allow the Plaintiffs to reasonably prepare for a deposition. It will be presumed that there has been sufficient time to reasonably prepare if such responses have been served upon liaison counsel no

less than forty-five (45) days prior to the date of the deposition.

b. Defendants' Liaison Counsel has provided to Plaintiffs' Liaison Counsel no less than twenty (20) days notice of any cross-notice in this litigation of a deposition originally noticed in related litigation in another state.

c. The parties have reasonably considered matters relating to cost and convenience.

Absent agreement or further order of this Court upon a showing of good cause, examination under these circumstances by counsel in this litigation shall not exceed three (3) hours of actual examination time.

Defendants' Liaison Counsel may cross-notice plaintiffs' counsel in related litigation in other states of depositions noticed by Plaintiffs' counsel in this litigation. In the event counsel receiving such a cross-notice examines a witness whose deposition was originally noticed in this litigation, such examination shall not be counted against the time for examination by counsel in this litigation as described below.

**6. Supplemental depositions.**

A party who did not receive reasonable notice of a deposition and who was not present or represented at the deposition (including parties later added, and parties in cases subsequently filed in, removed to, or transferred to this Court) may, within thirty (30) days after filing of the deposition (or, if later, within sixty (60) days after becoming a party in any action which is a part of this litigation), file a motion to conduct a supplemental deposition of the deponent. Within ten (10) days of the filing of any such motion, any party who opposes the supplemental deposition on the grounds that the original deposition fully covered the topics sought to be explored in the supplemental deposition, or that the testimony is not relevant, may bring a motion before this Court for a protective order prohibiting the supplemental deposition.

A supplemental deposition shall be treated as the resumption of the deposition originally noticed. During the supplemental deposition, a party may further examine a witness only with regard to topics authorized by the order allowing the supplemental deposition. The supplemental deposition shall be taken at the same location as the initial deposition unless otherwise agreed to by the parties.

**7. Number of depositions of current and former employees.**

Defendants shall make available for deposition all present employees requested by Plaintiffs, subject to the Defendants' right to object to the taking of any particular employee's deposition for good cause shown. Defendants shall also make former employees available for deposition, to the extent practicable. If Defendants are unable, despite their good faith efforts, to produce a former employee, then Defendants shall provide the former employee's last known address and shall cooperate in any reasonable effort to compel the former employee's attendance at the deposition.

Excluding depositions under Rule 30.02(f) of the Minnesota Rules of Civil Procedure, Plaintiffs may notice up to twenty (20) depositions per product model of Defendants' present and former employees and third-party witnesses. In addition, Plaintiffs may notice up to five (5) Rule 30.02(f) depositions per product model, provided that the particular matters identified in the notice on which examination is requested do not duplicate any matters identified in connection with a prior Rule 30.02(f) deposition in this litigation.

A party giving notice of a Rule 30.02(f) deposition shall, in good faith, describe with reasonable particularity the topics for examination. If the party who is to produce a witness for such a deposition believes that multiple witnesses will be necessary to respond to the described topics, the party, within a reasonable period of time before the deposition, shall so advise the

party giving notice and identify the witnesses who will respond to each topic.

Absent agreement by Defendants, Plaintiffs may apply to the Court to conduct further depositions only upon a showing of good cause and the specific identification of individuals sought to be deposed.

**8. Length of examination of witness in deposition originally noticed in this litigation.**

With regard to the deposition examination of a witness originally noticed in this litigation, Liaison Counsel shall consult prior to the deposition as to the amount of time likely to be required to depose the witness. It shall be presumed that a deposition that exceeds seven (7) actual hours of examination is unreasonable, subject to further agreement of the parties. Liaison Counsel shall make a good faith effort to agree to an extension before coming to the Court for resolution. Examinations that can be reasonably anticipated to require completion over a period of days shall be scheduled, to the extent possible and consistent with the witness's availability, over a period of consecutive days.

**9. Attendance.**

**(a) Who May Be Present.** Depositions may be attended by deponent, counsel for deponent, counsel of record and members and employees of their firms, the parties or the representative of a party, court reporters, and videographers. Upon application, and for good cause shown, the Court may permit attendance by a person who does not fall within any of the described categories. While the deponent is being examined about any document or information properly designated as Confidential Information, persons to whom disclosure is not authorized under the Protective Order shall be excluded from the deposition.

**(b) Notice of Intent to Attend a Deposition.** In order for counsel to make

arrangements for adequate deposition space and to assure compliance with the Protective Order, counsel who will attend a deposition shall advise Liaison Counsel for the noticing party of their attendance and the attendance of those known to them not fewer than three business days prior to the deposition, whenever feasible.

**10. Conduct during depositions.**

(a) **Examination.** Primary questioning of a deponent shall be performed by no more than two attorneys designated by Plaintiffs' Liaison Counsel to represent the personal-injury plaintiffs, one attorney representing the third-party payor plaintiffs, and by no more than two attorneys representing Defendants, subject to the following exceptions. Counsel for Plaintiffs who have individual or divergent positions that cannot be resolved in good faith may examine a deponent, provided the deposition does not exceed the total hours of actual examination otherwise provided by this Order. Such examination shall be limited to questions that the deponent has not been previously asked and to which the deponent has adequately responded. Once a deponent has adequately answered a question, the same, or substantially the same, question shall not be asked again. Counsel shall cooperate so that examinations by multiple attorneys do not result in a deposition exceeding the allotted time.

(b) **Scheduling.** Depositions originally noticed in this litigation shall be noticed thirty (30) calendar days before the date of the deposition, absent further agreement of the parties. Counsel shall cooperate in scheduling depositions at mutually convenient times and places, and reasonably convenient to the deponents.

(c) **Location.** The location of a deposition shall be as consistent as possible within each city, so the videotape equipment, if being used, can be left in place.

(d) **Postponements.** Once a deposition has been scheduled, it shall not be cancelled,

rescheduled, or relocated less than three (3) calendar days prior to the date it is scheduled to occur, except upon agreement among the party noticing the deposition, the opposing party, and the attorney representing the witness, or by leave of the Court for good cause.

(e) **Objections and directions not to answer.** All objections are preserved except objections to the form of the question, foundation, and responsiveness of the answer. No other speaking objections will be allowed. When a privilege is claimed, the witness shall nevertheless answer questions relevant to the existence, extent, or waiver of the privilege, such as the date of a communication, who made the statement, to whom and in whose presence the statement was made, other persons to whom the contents of the statement have been disclosed, and the general subject matter of the statement, unless such information is itself privileged. Any objection made at a deposition shall be deemed to have been made on behalf of all other parties.

(f) **Private consultation.** Deponents and their attorneys shall not engage in private conferences between themselves while a question is pending, except for the purpose of determining whether a privilege should be asserted.

#### **11. Disputes during depositions.**

Disputes arising during depositions that cannot be resolved by agreement and that, if not immediately resolved, will significantly disrupt the discovery schedule or require rescheduling of the deposition, or might result in the need to conduct a supplemental deposition, shall be presented to this Court by calling the Court's chambers. In the event the Court is not available, the deposition shall continue with full reservation of rights of the interrogation for a ruling at the earliest possible time. None of the provisions of this section shall deny counsel the right to suspend a deposition pursuant to Minnesota Rules of Civil Procedure, to file an appropriate motion with the Court at the conclusion of the deposition, or to appear personally before the



Court.

**12. Documents.**

(a) **Production of Documents.** A deponent subpoenaed to produce documents shall be served at least thirty (30) calendar days before the date the deponent is scheduled to produce such documents, absent further agreement between the party issuing the subpoena and the deponent or the person or entity in custody or control of the documents. Should the quantity of documents to be produced require inspection before the examination of the deponent commences, the production of documents shall occur at least seven (7) calendar days prior to the scheduled deposition, absent further agreement of the parties.

(b) **Protective Order.** A copy of the Protective Order issued by this Court shall be provided to a deponent before the deposition commences if the deponent is to produce or may be asked about documents that may contain Confidential Information. A party producing a deponent shall be responsible for giving the deponent the protective order and obtaining any required signatures; in all other circumstances, the party noticing the deposition shall bear that responsibility.

(c) **Marking of Deposition Exhibits.** To the extent feasible, Liaison Counsel shall establish a Master Deposition Document List identifying each document to be used in the examination of deponents by standardized numbering. All copies of the same document used as deposition exhibits should ordinarily be referred to by this standard identification system.

**13. Deposition of witnesses who have no personal knowledge of relevant facts.**

A party serving a person with a notice of a deposition or subpoena shall notify the person that, no less than fifteen (15) days prior to the deposition, the person may submit an affidavit attesting to the person's lack of knowledge regarding the matter to be deposed, and identifying a

person or persons believed to have such knowledge. Notwithstanding such affidavit, the noticing party may proceed with the deposition, subject to the right of the person to seek a protective order.

**14. Videotaped depositions.**

(a) By so indicating in its notice of a deposition, a party, at its expense, may record a deposition by videotape pursuant to Minnesota Rules of Civil Procedure.

(b) **Video Operator.** The operator(s) of the videotape recording equipment shall be subject to the provisions of Minnesota Rules of Civil Procedure. At the commencement of the deposition the operator(s) shall swear or affirm to record the proceedings fairly and accurately.


(c) **Attendance.** Each witness, attorney and other person attending the deposition shall be identified on the record at the commencement of the deposition. Only the deponent, and demonstrative materials or other exhibits used during the deposition, are to be videotaped.

(d) **Standards.** Unless physically incapacitated, the deponent shall be seated at a table or in a witness box, except when reviewing or presenting demonstrative materials for which a change in position is needed. To the extent practicable, the deposition shall be conducted in a neutral setting, against a solid background with only such lighting as is required for accurate video recording. Lighting, camera angle, lens setting, and field of view will be changed only as necessary to record accurately the natural body movements of the deponent or to portray exhibits and materials used during the deposition. Sound levels will be altered only as necessary to record satisfactorily the voices of counsel and the deponent. Smoking is prohibited.

(e) **Filing.** The operator shall preserve custody of the original videotape in its original condition until further order of the Court. No part of the video or audio record of a videotaped deposition shall be released or made available to any member of the public unless

authorized by the Court.

October 30, 2006



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William H. Leary III  
Judge of the District Court